

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 4(g) of the Cable	)	MM Docket No. 93-8
Television Consumer Protection Act of 1992	)	
	)	
Home Shopping Station Issues	)	
To: The Commission		

**COMMENTS OF READING BROADCASTING, INC.**

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Date: July 18, 2007

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## **SUMMARY**

George L. Miller, Chapter 11 Trustee, Reading Broadcasting, Inc. (“Reading”), the licensee of WTVE(TV), by its attorneys, hereby submits these comments in response to the Public Notice issued by the Commission on May 4, 2007, seeking to update the record in connection with the Petition for Reconsideration filed by CSC on August 23, 1993. In the 1993 Report and Order in this proceeding, the Commission concluded that home shopping stations serve the public interest and therefore qualify as local commercial television stations for the purpose of mandatory cable carriage. Reading fully supports the Commission’s initial conclusion and respectfully requests that the Petition be denied.

CSC’s argument that the home shopping format results in excessive commercialization fails for the following three reasons. First, the Commission has recognized that the only programming obligation of a licensee is to provide programming responsive to issues of concern to the residents of its community of license. The Commission concluded that it should defer to marketplace forces when it eliminated the commercialization guidelines, and the legislative history of Section 4(g) of the Cable Act indicates legitimate Congressional concern that adopting new commercialization guidelines would be unconstitutional. Second, CSC’s demand that the Commission consider a broadcast station’s programming content in its public interest analysis, and deny a home shopping station must-carry rights based on its chosen format, would violate the First Amendment, and injecting this content-based distinction into the Cable Act would place the must-carry rules in peril. Third, the Commission properly focused its analysis of whether home shopping stations serve the public interest, convenience and necessity on the three statutory factors identified in Section 4(g) and the additional public interest factors, and nothing

has changed since the Commission concluded on the basis of these factors that the home shopping format is in the public interest.

Furthermore, CSC's argument that the home shopping format is not in the public interest fails for the following four reasons. First, home shopping stations fulfill their public interest obligations in the same manner as any other television station, regardless of its format, and there is no reason why the home shopping format in and of itself would preclude a home shopping station from meeting those obligations. Second, even if the Commission were to consider a station's home shopping format in making its public interest determination, the Commission should conclude that the home shopping format in fact serves the public interest because of the valuable services it provides to the elderly, the disabled and others confined to their homes. Third, the home shopping format makes it financially possible for small and marginal stations to support a variety of important public interest activities within their local communities. And fourth, the home shopping format affords small and marginal stations with opportunities to enter the television marketplace without the immediate need to develop a complete schedule of programming.

For these reasons, Reading respectfully requests that the Petition be dismissed and that the Commission affirm its conclusions from the 1993 Report and Order.

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**COMMENTS OF READING BROADCASTING, INC.**

George L. Miller, Chapter 11 Trustee, Reading Broadcasting, Inc. (“Reading”), by its attorneys, hereby submits these comments in response to the Public Notice<sup>1</sup> issued by the Federal Communications Commission (“Commission”). The Public Notice seeks to update the record in connection with the Petition for Reconsideration (the “Petition”) filed by the Center for the Study of Commercialism (“CSC”) on August 23, 1993 that asks the Commission to reconsider its conclusion that home shopping stations serve the public interest and therefore qualify as local commercial television stations for the purpose of mandatory cable carriage.<sup>2</sup> For the reasons set forth below, Reading fully supports the Commission’s initial conclusion in this proceeding and respectfully requests that the Petition be denied.

Reading is licensee of a single commercial independent UHF television station, WTVE(TV), Reading, Pennsylvania. Both prior to filing for Chapter 11 bankruptcy protection

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<sup>1</sup> *Commission Seeks to Update the Record for a Petition for Reconsideration Regarding Home Shopping Stations*, Public Notice, MM Docket No. 93-8, (rel. May 4, 2007).

<sup>2</sup> *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 93-8, Report and Order, 8 FCC Rcd 5321 (1993) (“*Report and Order*”).

in October 2005 and after, Reading has broadcast home shopping programming as part of its overall programming. Reading has attempted to secure alternative programming and shift its focus toward other non-home shopping programming at least three times over the last 14 years.

## **I. BACKGROUND OF THE HOME SHOPPING PROCEEDING.**

In its July 19, 1993 Report and Order the Commission determined that television stations that broadcast a home shopping format serve the public interest and therefore are qualified to assert mandatory cable carriage as local commercial television stations. This decision was supported by the “overwhelming majority of comments” filed,<sup>3</sup> and was based on the Commission’s thoughtful analysis of the three statutory factors identified in Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992.<sup>4</sup> The Cable Act required the Commission to consider: (1) the viewing of home shopping stations by the public; (2) the level of competing demands for the spectrum allocated to such stations; and (3) the role of such stations in providing competition to nonbroadcast services offering similar programming.

Regarding the first factor, the Commission concluded that “home shopping stations have significant viewership,” and that “the format’s continued success and expansion would not likely occur without significant viewer support.”<sup>5</sup> Indeed, the Commission noted the complete lack of “quantifiable data demonstrating otherwise.”<sup>6</sup>

In considering the second factor, the level of competing demands for the spectrum allocated to home shopping stations, the Commission concluded that “the existing renewal

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<sup>3</sup> *Id.* at 5321.

<sup>4</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992) (“*Cable Act*”).

<sup>5</sup> *Report and Order* at 5322.

<sup>6</sup> *Id.*

system, as well as the initial licensing process, adequately takes into account the competing demands of television broadcasters for the television broadcast spectrum.”<sup>7</sup> For this reason, the Commission properly considered only the spectrum demands of television broadcasters.

With respect to the third factor, the role of home shopping stations in providing competition to nonbroadcast services offering similar programming, the Commission concluded that “the existence and carriage of home shopping broadcast stations play a role in providing competition for nonbroadcast services supplying similar programming.”<sup>8</sup> In this regard, the Commission noted that home shopping stations increase the options available to viewers who wish to watch home shopping programming.<sup>9</sup> Reading’s must-carry status promotes competition within the home shopping format and it competes with cable home shopping giants QVC and HSN, among others.

The Commission supplemented its statutory review with a reasoned analysis of a number of other critical public interest factors, including:

- Its preference for “direct viewer control over content through the reflection of their preferences in the market rather than governmental regulation of programming content[,]” and its conclusion that home shopping stations could not survive if viewers were dissatisfied with their level of commercialization;<sup>10</sup>
- Its conclusion that “home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner;”<sup>11</sup>

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<sup>7</sup> *Id.* at 5323.

<sup>8</sup> *Id.* at 5326.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5326-5327.

<sup>11</sup> *Id.* at 5327.

- The evidence that home shopping stations have satisfied their obligations to address the needs and interests of their communities of license, and its conclusion that home shopping stations are subject to the same public interest obligations and requirements as other television stations;<sup>12</sup> and
- Its conclusion that “home shopping affiliation is important to the efforts of a number of small and marginal stations to continue to operate and serve the public interest.”<sup>13</sup>

## **II. GRANTING MUST-CARRY STATUS TO HOME SHOPPING STATIONS DOES NOT RESULT IN OVERCOMMERCIALIZATION.**

CSC focused much of its Petition on the claim that the Commission did not address whether a home shopping format results in excessive commercialization.<sup>14</sup> CSC’s arguments fail for the following reasons.

### **A. The Commission Previously Determined that a Home Shopping Format Does Not Result in Excessive Commercialization, and the Legislative History of Section 4(g) Demonstrates that Congress Did Not Intend the Commission to Reconsider that Conclusion.**

Prior to this proceeding, the Commission found that “the only programming obligation of a licensee should be to provide programming responsive to issues of concern to its community of license.”<sup>15</sup> In eliminating its commercialization guidelines, the Commission determined that “existing and future marketplace forces will ensure the presentation of programming that addresses significant issues in the community.”<sup>16</sup> Rather than ignore this issue, as CSC speciously claims, the Commission apparently had the potential for home shopping formats in

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5328.

<sup>14</sup> *Petition* at 3.

<sup>15</sup> *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 at ¶ 32 (1984) (subsequent history omitted).

<sup>16</sup> *Id.* at ¶ 90.



mind when it declared that “[a] significant danger posed by our commercial guideline is that it may impede the ability of commercial television stations to present innovative and detailed commercials.... [O]ur regulation may also interfere with the natural growth and development of broadcast television as it attempts to compete with future video market entrants.”<sup>17</sup>

The legislative history of Section 4(g) demonstrates that Congress did not intend for the Commission to reconsider its deregulation of commercial limits or to regulate a station’s chosen format. In response to an unsuccessful attempt by Senator Breaux to amend the Cable Act to prohibit stations predominantly used for the transmission of sales presentations or program-length commercials from receiving must-carry status,<sup>18</sup> Senator Reid correctly concluded that such an approach would be unconstitutional as a “a clear case of content regulation.”<sup>19</sup>

**B. Considering the Format of Home Shopping Stations in Determining Whether They Serve the Public Interest, Convenience, and Necessity Would Violate the First Amendment.**

CSC’s demand that the Commission consider a broadcast station’s programming content in its public interest analysis, and deny a home shopping station must-carry rights based on its chosen format, would violate the First Amendment. Such an interference with a licensee’s programming decisions has been rejected as both constitutionally impermissible and ill-advised.<sup>20</sup> Furthermore, it defies logic to conclude that a home shopping station that is found to

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<sup>17</sup> *Id.* at ¶ 62.

<sup>18</sup> *Congressional Record* (January 29, 1992) at S571.

<sup>19</sup> *Id.* at S572.

<sup>20</sup> *See, e.g., Applications of Abacus Broadcasting Corp. For Renewal of License of Station KJQN-FM (95.5 MHz), Ogden, Utah and Rees Broadcasting, Inc. For a Construction Permit for a New FM Station on 95.5 MHz at Ogden, Utah*, 6 FCC Rcd 7182 at ¶ 2 (ASD 1991) (“the First Amendment to the U.S. Constitution and § 326 of the Communications Act of 1934, as amended, prohibit the Commission from censoring broadcast material or interfering with the licensee’s

operate in the public interest in connection with its application for renewal of license would not qualify for must-carry rights.

Injecting this content-based distinction into the Cable Act would place the must-carry rules in peril.<sup>21</sup> In upholding the constitutionality of the must-carry rules, Justice Kennedy's majority opinion for the Supreme Court stated, "Our review of the Act and its various findings persuades us that Congress' overriding objective in enacting must-carry was not to favor programming of a particular subject matter, viewpoint, or format, but rather to preserve access to free television programming...."<sup>22</sup> CSC's reading of the Cable Act, however, would disfavor programming with a home shopping format, thus necessitating a stricter First Amendment scrutiny in evaluating the constitutionality of the Cable Act.

**C. The Commission Properly Considered the Statutory Factors and Other Public Interest Matters, and Its Conclusions Remain Accurate.**

As detailed above, the Commission properly focused its analysis of whether home shopping stations serve the public interest, convenience and necessity on the three statutory factors identified in Section 4(g) of the Cable Act and the additional public interest factors previously discussed. The issue of whether the home shopping format constitutes overcommercialization is irrelevant to the current proceeding as it has already been addressed

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discretion in selecting and broadcasting particular programming"); *FCC v. WNCN Listeners Guild et al.*, 450 U.S. 582, 603 (1981) ("We decline to overturn the Commission's Policy Statement, which prefers reliance on market forces to its own attempt to oversee format changes at the behest of disaffected listeners").

<sup>21</sup> *Report and Order* at 5329 ("[W]e agree... that the failure to qualify certain licensed stations based upon their programming decisions would place the content-neutrality of the must-carry rules into serious doubt, thereby jeopardizing their constitutionality").

<sup>22</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 646 (1994).

and conclusively resolved, and as set forth below, the Commission's prior findings remain accurate today.

Nothing has changed to alter the Commission's conclusion that the viewership of home shopping stations is significant. The considerable number of home shopping stations demonstrates the continuing popularity of this format. If consumers did not find home shopping formats useful and desirable, then marketplace forces would have forced those stations to change their formats. Similarly, nothing has changed that would support a reversal of the Commission's finding with respect to the second statutory factor that its review of competing demands for the spectrum allocated to home shopping stations is limited to other television broadcast stations. CSC lacks support for its contention that the second factor is intended as a potential reallocation of the television broadcast spectrum. There is nothing unique about the television broadcast spectrum on the whole, or the spectrum allocated to home shopping stations in particular, that would necessitate a consideration of "whether the public interest is better served by the use of such spectrum by police, fire or other emergency services, or by other commerce-producing broadcast services such as land mobile communications."<sup>23</sup> Additionally, the Commission already has commenced the process of reallocating a portion of the broadcast spectrum for public safety purposes in connection with the transition to digital television, which renders CSC's argument moot.<sup>24</sup>

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<sup>23</sup> Reply Comments of CSC at 21, MM Docket No. 93-8, filed April 27, 1993.

<sup>24</sup> See, e.g., *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18284 (2004).

Finally, it cannot be disputed that under the third statutory factor broadcast stations with a home shopping format continue to vigorously compete with nonbroadcast services that offer similar programming.

### **III. HOME SHOPPING STATIONS SERVE THE PUBLIC INTEREST.**

An analysis of the additional public interest factors relied on by the Commission in its determination that home shopping stations serve the public interest confirms that the Commission's initial decision in this proceeding remains entirely valid today.

First, home shopping stations "have been able to meet the Commission's standards on public affairs programming responsive to issues confronting the local community, as well as standards on indecency and political or emergency broadcasting."<sup>25</sup> These stations fulfill their public interest obligations in the same manner as any other television station, regardless of its format, and there is no reason why the home shopping format in and of itself would preclude a home shopping station from meeting those obligations. The existing record in this proceeding demonstrates the extensive public service programming efforts of many home shopping stations. Then as now, if a particular station fails to satisfy its public interest obligations, the appropriate forum in which to address that issue would be during the station's license renewal process.<sup>26</sup>

Second, even if the Commission were to consider a station's home shopping format in making its public interest determination, the Commission should conclude that the home

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<sup>25</sup> *Report and Order* at 5327 ("[T]he chosen format of home shopping stations generally does not preclude them from adequately addressing the needs and interests of their communities of license").

<sup>26</sup> See, e.g., *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996, Broadcast License Renewal Procedures*, 11 FCC Rcd 6363 at ¶ 3 (1996) (stating that one factor in granting a broadcast station's license renewal application is whether "the station has served the public interest, convenience, and necessity" during the preceding license term).

shopping programming format in fact serves the public interest. In the Report and Order, the Commission noted the statements of several commenters that home shopping stations “provide valuable services to the disabled and others confined to their homes, the elderly, families without time to shop by other means, people without ready access to retail outlets or whose outlets do not stock the goods they want, people without cars or other transportation, people who dislike shopping, and people who are afraid of violent crime in conventional shopping areas.”<sup>27</sup> The Commission concluded that “home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner.”<sup>28</sup> Nothing has changed to alter this conclusion. Although online shopping has become over the intervening years another way for people to shop at home, the home shopping portion of Reading’s income has over the last 14 years nevertheless increased, signaling both the public’s continued reliance on home shopping programming and that home shopping programming remains in the public interest. Moreover, Reading’s home shopping programming makes available to its viewers a unique and comprehensive set of practical products. Finally, Reading’s home shopping programming offers convenience and a shop-at-home option for those who may be uncomfortable with e-commerce or have limited internet access, such as the elderly.

Third, the home shopping format serves the public interest by making it possible for small and marginal stations to support a variety of important public interest activities within their local communities. Without access to more traditional sources of capital, these stations depend

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<sup>27</sup> *Report and Order* at 5327.

<sup>28</sup> *Id.*

on home shopping programming to satisfy their public interest obligations and sustain their level of community involvement.

For its part, Reading's level of service to its local community would not be possible but for the revenue it derives from home shopping programming. Revenue from home shopping programming not only pays Reading's overhead, but makes it possible for Reading to comply with and even exceed its public interest obligations and be an active participant in its community. For example, home shopping revenue enables Reading to produce high quality and informative public affairs programming in its studio such as "For the People" (addressing public health, emergency preparedness, politics and voting, local economic development, local culture, elderly issues, volunteer opportunities, and education) and "UrbanUnity" (addressing civil rights, family issues, faith-based initiatives, African American history, employment discrimination, and education), and to partner with community organizations to make available to viewers timely public interest programming such as "Temple Update" (addressing campus life, education, and current events, produced by Temple University) and "Soldiers Greetings" (reaching local families at the holidays, produced in conjunction with an organization called Hometown News Army/Air Force). Furthermore, Reading works with numerous organizations in its local community including the United Way, the NAACP, the March of Dimes, and the Pennsylvania Association of Broadcasters.

Home shopping programming enables Reading to be an active participant in its community. Reading consistently exceeds its EEO recruiting requirements, using recruiting events as speaking engagements to inform the public about employment opportunities, careers in television, and governmental regulation encountered in daily life. Reading employees also are involved in training interns and provide tours of WTVE(TV)'s facilities to local community

groups. Finally, home shopping revenue has financed the conversion of Reading's broadcast station to digital using a distributed transmission system ("DTS"), a new technology that may offer substantial benefits to the entire digital television industry.

Fourth, the home shopping format affords small and marginal stations with opportunities to enter the television marketplace without the immediate need to develop a complete schedule of programming. Obtaining high quality programming is expensive and can be difficult for small and marginal stations, and independently-owned stations often lack the economies of scale or bargaining power that other network-affiliated stations possess. Reading competes for programming in the highly competitive Philadelphia DMA, and has been unable to retain non-home shopping programming in this environment. Moreover, Reading's attempts to switch to a foreign language format and a news format, respectively, were unsuccessful. Notwithstanding these difficulties, Reading continues to broadcast approximately 14.5 hours of Christian programming per week. The economic viability of small, independent television stations is consistent with the Commission's commitment to localism.<sup>29</sup> In its Report and Order, the Commission concluded that "home shopping affiliation is important to the efforts of a number of small and marginal stations to continue to operate and serve the public interest."<sup>30</sup> That conclusion is as accurate today as it was 14 years ago, and home shopping formats facilitate the achievement of that important goal.

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<sup>29</sup> See, e.g., *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12425 (2004).

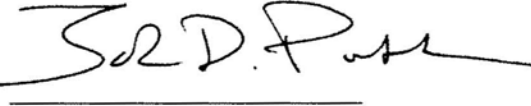
<sup>30</sup> *Report and Order* at 5327.

**IV. CONCLUSION.**

For the foregoing reasons, Reading respectfully requests that the Petition be dismissed and that the Commission affirm its conclusions in the Report and Order.

Respectfully submitted,

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